

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: June 27, 2008

<b>CHRISTINE DELRIO, as the</b>	)	
<b>legal representative of her infant son,</b>	)	
<b>LUCAS DELRIO</b>	)	No. 06-499V
<b>Petitioner,</b>	)	
	)	UNPUBLISHED
<b>v.</b>	)	
	)	Attorneys' Fees and Costs
<b>SECRETARY OF THE DEPARTMENT</b>	)	
<b>OF HEALTH AND HUMAN SERVICES,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

Stephanie O'Connor, New York, NY, for petitioner.

Alexis Babcock, with whom were Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, Mark W. Rogers, Deputy Director, and Catharine E. Reeves, Assistant Director, United States Department of Justice, Torts Branch, Civil Division, Washington, DC, for respondent.

### DECISION<sup>1</sup>

On July 5, 2006, petitioner, Christine Delrio, as the legal representative of her infant son, Lucas Delrio, filed a petition pursuant to the National Vaccine Injury

---

<sup>1</sup> Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless an issued decision contains trade secrets or commercial or financial information that is privileged or confidential, or the decision contains medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. When a special master files a decision or substantive order with the Clerk of the Court, each party has 14 days within which to identify and move for the redaction of privileged or confidential information before the document's public disclosure.

Compensation Program<sup>2</sup> (the Act or the Program), 42 U.S.C. § 300aa-10 et seq. Petitioner alleges that on July 3, 2003, Lucas received diphtheria-tetanus-acellular-pertussis (“DTaP”), inactivated polio virus (“IPV”), hemophilus influenza type B (“Hib”), and pneumococcal vaccinations. Petitioner also alleges that after receiving these vaccinations, Lucas suffered an “acute encephalopathy, indicated by two separate episodes where he lost consciousness for several seconds, turned blue, and experienced brief shaking activity.” Petition (Pet.) at ¶ 6-7. On September 28, 2007, the undersigned issued a decision denying petitioner’s claim for compensation.

On March 26, 2008, petitioner filed a Motion for Extension of Time to Submit Fee Petition, which was granted. Petitioner’s counsel filed an additional Motion for Extension of Time on May 9, 2008, which was also granted. Petitioner’s counsel filed a Motion for Attorney’s Fees on June 11, 2008.

On June 26, 2008, the parties contacted the undersigned’s law clerk by telephone and indicated that they had discussed petitioner’s counsel’s fee request and that they had determined that a request for attorneys’ fees and costs in the amount \$29,000.00 would not draw an objection by respondent. Accordingly, petitioner’s counsel now seeks an award of attorneys’ fees and costs totaling \$29,000.00. Petitioner had no out-of-pocket expenses according to the General Order No. 9 filed by petitioner.

The Vaccine Act permits an award of reasonable attorneys’ fees and costs. 42 U.S.C. § 300 aa-15(e). Based on the reasonableness of petitioner’s request and on respondent’s counsel’s lack of objection to petitioner’s counsel’s amended fee request, the undersigned **GRANTS** petitioner’s amended request for attorneys’ fees and costs.

The undersigned awards petitioner \$29,000.00 in attorneys’ fees and costs.

Therefore, in the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in petitioner’s favor in the amount of \$29,000.00 in attorneys’ fees and attorneys’ costs.<sup>3</sup> The judgment shall reflect that the Douglas & London, P.C. firm may collect \$29,000.00 from petitioner.

**IT IS SO ORDERED.**

---

<sup>2</sup> Hereinafter, for ease of reference, all “section” references to the Vaccine Injury Compensation Act will be to the pertinent subdivision of 42 U.S.C. § 300aa (2006 ed.).

<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

s/Patricia E. Campbell-Smith  
Patricia E. Campbell-Smith  
Special Master